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REGULATORY IMPACT ASSESSMENT IN POLAND AND IN THE EUROPEAN UNION IN THE CONTEXT OF ECONOMIZATION OF LAW – CHOSEN ISSUES

I. Introduction

The legal regulations usually have also economic consequences. It is well- known in types of regulation which background has close connection with the economics, such as financial law, tax law or economic law. The economic consequences of established regulation in law and economics are examined. One of the aspects of law and economics is *Regulatory Impact Assessment* (RIA). Law and economics are concentrated, among others, on consequences of established legal regulations, costs and benefits for its recipients and proportions between costs and benefits whereas RIA mainly examines socioeconomic effects of proposed or existing regulations.[1] RIA also uses analytical methods such as cost/benefits. analysis. Nowadays, many countries introduce RIA in order to ensure high quality of law.[2] Therefore, RIA became a part of the legislative procedure in many states. It is also a part of legislative procedure at the supranational and the national level in the member states of the European Union (EU), including Poland.

RIA can also be the example of the economization of law. In legal regulations a few forms of economization of law can be distinguished. One of them is providing regulations for socioeconomic aims, regarding its fairness as well as economic efficiency. Therefore, RIA's issues could be a good example of economization of law, especially that it has practical meaning as a part of legislative procedure in Poland and in the EU.

The aim of the study is to find out if the Polish regulations devoted to RIA are sufficient enough to improve the quality of law. The study uses the analysing RIA in Poland and in the EU in the context of economization of law. In the paper the forms of economization of law were also analysed. Moreover, some chosen examples of economization of financial law, tax law and economic law together with RIA of economic law in Poland were introduced.

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[1] Rogowski, Wojciech – Szpringer, Włodzimierz: Problemy metodologiczne oceny skutków regulacji w Polsce – czy powstają nowe perspektywy ekonomicznej analizy prawa? [The Methodology Problems of RIA in Poland – are Created New Perspectives of Law and Economics? In: Rogowski, Wojciech Szpringer, Włodzimierz (eds): *Ocena skutków regulacji – poradnik OSR*, *doświadczenia*, *perspektywy* [*RIA – Handbook of RIA*, *Experiences*, *Perspectives*], C.H. Beck, Warsaw, 2007. 11.

[2] The list of states who prepared documents connected with RIA is available here: http://rulemaking.worldbank.org/ria-documents (17.09.2018).

II. Definition of RIA and its justification

At the beginning it must be stressed that two different notions for describing the analysis of economic consequences of legal regulations are used. In the OECD documents the RIA is used whereas the European Commission uses the notion impact assessment (IA).[3] In Polish legal acts both, RIA (*pol. ocena skutków regulacji*) and IA (*pol. ocena wpływu*) are used as well.

Regulatory Impact Assessment is a part of Better Regulation programme, namely,

> "[*i*]*t aims to deregulate sectors of economy where possible, reduce burdens on businesses and improve the way regulation is enforced. RIAs focus on only adding new regulations where necessary*, *and doing do in a proportionate way*, *whereas the other elements on Better Regulation are concerned with the existing body of regulation.*"[4]

According to the OECD's terminology RIA is

> "*a process if systematically identifying and assessing the expected effects of regulatory proposals*, *using a consistent analytical method*, *such as benefit/cost analysis. RIA is a comparative process*: *it is based on determining the underlying regulatory objective sought and identifying all the policy interventions that are capable of achieving them. These* "*feasible alternatives*" *must all be assessed*, *using the same method*, *to inform decision-makers about effectiveness and efficiency of different options and enable the most effective options to be systematically chosen*".[5]

The purposes of regulation are maximizing social welfare, removing market externalities, achieving equity and other social aims.[6] If state regulation promotes these aims, it should be both efficient and effective. Efficiency means that the planned goals are achieved. Effectiveness means that they are achieved at least cost.[7] In practice, ensure that regulations are efficient in economic sense could be difficult because of various criteria of economic efficiency. For example, there are methodologies of examining economic efficiency such as efficiency in *Pareto sense* (the mostly used in practice),[8] in *Kaldor-Hicks sense* or idea of

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[3] Kałużyńska, Małgorzata: Ocena wpływu legislacji unijnej i jej oddziaływanie na rozwiązania krajowe [RIA of the EU Legislation and Its Influence on National Solutions]. In: Rogowski, Wojciech Szpringer, Włodzimierz (eds): *Ocena skutków regulacji – poradnik OSR*, *doświadczenia, perspektywy* [*RIA – Handbook of RIA*, *Experiences, Perspectives*], C.H. Beck, Warsaw, 2007. 58.

[4] *Evaluation of Regulatory Impact Assessments Compendium Report 2004–05*, *Report by the Comptroller and Auditor General*, The National Audit Office, London, 2005. 8.

[5] *Introductory Handbook for Undertaking Regulatory Impact Analysis* (*RIA*), OECD, 2008. https://www.oecd.org/gov/regulatory-policy/44789472.pdf (17.09.2018). 3. [OECD Handbook]

[6] OECD Handbook, 6–7.

[7] Kirkpatrick, Colin – Parker, David – Zhang, Yin-Fang: *Regulatory Impact Assessment in Developing and Transition Economies*: *A Survey of Current Practice*. Centre on Regulation and Competition, Working Papers, 83 (2004). 3.

[8] See more: Walulik, Jan: O relacjach regulacji ekonomicznej i ochrony konkurencji – próba podsumowania debaty [About the Relation between Economic Regulation and Protection of Competition – the Probe of Summary]. In: Bernatt, Maciej – Jurkowska-Gomułka, Agata – Namysłowska, Monika – Piszcz, Anna (eds): *Wyzwania dla ochrony konkurencji i regulacji rynku*. *Księga Jubileuszowa dedykowana Profesorowi Tadeuszowi Skocznemu* [*The Chalanges for protection of competition and market regulation*. *The Memorial Book Dedicated to Professor Tadeusz Skoczny*], C.H. Beck, Warsaw 2017. 480.

maximizing social welfare.[9] RIA uses not only different criteria of economic efficiency, but also is based on the rationality of legislator. Usually, the legislator is rational. For example, according to Article 22 of the Polish Constitution[10]:" *Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons*." This public interest *is „by its very nature, a category founded upon rationality. A legislator who fails to adduce concrete circumstances evidencing the existence of a public interests must refrain from action*."[11]

All above mentioned issues make the RIA quite difficult to conduct in practice. The lawmakers should decide if the states intervention is necessary, and if so, compare the achievements of "feasible alternatives" of intervention using the same analytical method. It must be stressed that RIA can be a part of economization of law, because its aims are connected with socioeconomic aspects of regulation.

III. RIA as an element of the economization of law: the main ideas and chosen examples

RIA can be described as one of the aspects of the economization of law. In lexical meaning 'economic' means 'doing something more economic, economical'.[12] Despite the lexical meaning of the notion of economic refers to the rational, cost-effective methodology of activity in economic sense, it is not enough to explain the idea of economization of law. The economization of law is the broader notion than RIA because it refers not only to RIA but also to all forms of using economics, economic instruments, economic categories in law. Therefore, several form of economization of law can be identified.

First, it is constructing of legal regulations, in which economic categories from microeconomics and macroeconomics without creating its legal definitions are used. For example, the economic categories which are established in financial law are *gross domestic product* (GDP), public debt, unemployment, budget deficit. On the other hand, in tax law there are many economic categories concerning calculating of tax base (e.g. amortization, cost of receiving income) are included. The economic categories in economic law usually are connected with market competition or monopolisation. Therefore, in above mentioned kinds of law the economic background is strongly noticeable.

Second, economization of law is giving a legal significance to some notions including economic category (*e.g.* using economic category in legal definition such as relevant market in antitrust law).

Third, economization of law can also manifest in an enactment and application of law, which will be provided for socioeconomic aims and, at the same time, will be also fair and effective as much as possible.

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[9] Stelmach, Jerzy, – Brożek, Bartosz – Załuski, Wojciech: *Dziesięć wykładów o ekonomii prawa* [*Ten Lectures about Economics of Law*] Wolters Kluwer Polska, Warsaw 2007. 17 19.

[10] The Constitution of the Republic of Poland of 2nd April 1997, *Journal of Laws* No. 78, item 483 as amended.

[11] Chmielewski, Jan – Hoff, Waldemar: Regulatory Impact Assessment (RIA) and Rationality of Law – Legal Aspects. *Management and Business Administration – Central Europe*, 23 (2015) 2. 95.

[12] Szymczak, Mieczysław (ed): *Słownik języka polskiego* [*The Dictionary of the Polish Language*], Vol. I. PWN, Warsaw 1978. 522.

Moreover, economization of law means using of different economic instruments such as economic techniques and models in order to verify the effects of legal regulations.

The above-mentioned forms of economization of law show how multifaceted issue it is. It is not only problem of using in regulation economic category, but also analysing its economic consequences. Moreover, these consequences should ensure that the aims of regulation will be achieved and that it will be assessed with the use of economic techniques.

The way of presentation of different forms of economization of law on some examples of financial, tax, economic law can be shown.

Financial law background is traditionally connected with economics, especially macroeconomics. The public finance depends on economic situation, so in the financial law many economic categories such as public debt, budget deficit is used. Moreover, in the financial law the economic situation is directly taken into consideration because it influences the financial situation of the state. It is especially apparent in the budget law, because the current macroeconomic situation has significant effect on the budget spending and incomes. Therefore, also the draft of budget bill and its justification includes many macroeconomics indicators. For example, according to the Article 142 item 2 point 2 of Polish Public Finance Act of 27 August, 2009[13] the justification of draft of budget bill contains, among others, the macroeconomic scenario for the financial year and three subsequent years. It contains especially macroeconomic assumptions concerning the prognosis such as GDP, rate of inflation, domestic demand. Moreover, this macroeconomic scenario: 1) has to be compared with the most current European Commissions forecasts and prognosis prepared by independent institutions and has to contain also the analysis of significant differences, 2) has to contain information about actions taken in the case of expected significant divergence influence in a negative way for macroeconomic prognosis in the period of subsequent four financial years preceding the elaboration of macroeconomic scenario, 3) sensitivity analysis in the scope of deficit and debt of general government sector in the meaning of Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Union[14], public debt and the amount of expenditures referred to Article 112 aa item 1 Public Finance Act, under various growth and interest rates assumptions with the discussion of important risk factors. So, the base for preparing the draft of the budget bill in Poland are mainly macroeconomic prognosis.

As was mentioned above, the typical economic category, which are used in financial law are budget deficit and public debt, which are one of the most important indicators for financial stability of the state. Moreover, these economic categories are crucial for the public finances' safety, at the national and supranational level as well. The evidence how important they are, was the financial crisis of the year 2008, which results was, among others, the increasing of amount of public debt and public deficit in many EU countries.[15] Therefore, since then the fiscal rules were introduced and strengthened in the EU member states. Since this financial crisis at the supranational level of EU reforms concerning limitation of the amount of public debt were started. One of the elements of these reforms was strengthening

[13] Journal of Laws of 2017, item 2077 as amended.

[14] Official Journal of the European Union of 10.6.2009, item L 145/1 as amended.

[15] See more: *Government finance statistics – Summary tables*, *Data 1995–2016*, Publications Office of the European Union, Luxembourg, No. 2017/1, *passim*.

the legal regulation which helps to control the amount of public debt. The good example of them are fiscal rules, which are defined as permanent limitation of fiscal policy, usually defined in form of synthetic total index (*i.e.* admissible) of fiscal result (budget).[16]

In the literature fiscal rules are divided in many ways. According to one of the divisions there are quantitative (*e.g.* limits for special economic categories) and qualitative rules (descriptive or procedural restrictions).[17] Another division of fiscal rules concerns its features such as territorial scope (fiscal rules national and supranational), the stages of sector of public finance (the whole sector or its part e.g. local level), the time (short-time or multiannual rules), the subject (spending, income rules, balanced budget rule, public debt rule).[18] The fiscal rules can also rely to incur liabilities (e.g. prohibition of taking public loans by public authorities in central bank).[19]

The economization of financial law is especially apparent in fiscal rules of quantitative nature because its construction contains usually relation of defined economic variables. For example, according to article 216 item 5 of Polish Constitution:

> "*It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.*"[20]

In this article the limit of public debt at the level of 60% of GDP was established. So, this regulation, which is an example of fiscal rule concerning public debt includes two economic categories such as public debt and GDP. The fiscal rules related to public debt (and also public deficit) at the supranational level were also established. There are two fiscal rules like this: for public deficit (3% of GDP) and for public debt (60% of GDP).

Tax law is another example of law, in which many economic categories are used. The nature of tax is both economic and legal. Moreover, paying tax implies specific socio-economic consequences, which can be used by the state to achieve some social and economic aims (within tax policy). Therefore, in literature the functions of taxes (*e.g.* incentive, allocation) are specified.[21] In tax law especially two types of economization of law which were mentioned above are used, *i.e.* using economic categories in legal acts and tax functions in order to receive socioeconomic aims. The example of the first type of economization

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[16] Kopits, George – Symansky, Steven A.: *Fiscal Policy Rules*. IMF, Occasional Paper 162, Washington 1998. 2.

[17] For example, *Alesina* and *Perotti* specify, among others, numerical fiscal rules concerning balanced budget, procedural fiscal rules regarding respective stages of budget procedure. Alesina, Alberto – Perotti, Roberto: Budget Deficits and Budget Institutions. In: Poterba, James von – Hagen, Jurgen (eds): *Fiscal Institutions and Fiscal Performance*. The University of Chicago Press Books, London 1999. 15 17. See also: Folscher, Alta: A Balancing Act: Fiscal Responsibility, Accountability and the Power of the Purse. *OECD Journal on Budgeting*, 6 (2006) 2. *passim*.

[18] Spychała, Joanna: *Wydatkowe reguły fiskalne jako instrument dyscyplinujący finanse publiczne* [*The Spending Fiscal Rule as an Instrument of the Discipline of Public Finances*], Zeszyty Naukowe Uniwersytetu Szczecińskiego No. 858, Współczesne Problemy Ekonomiczne, No. 11. 2015. 228 230.

[19] Kopits–Symansky.1998.2, see also: Marchewka-Bartkowiak, Kamila: Reguły fiskalne w warunkach kryzysu finansów publicznych [Fiscal Rules in the Conditions of Crisis of Public Finance]. *Ekonomia i Prawo*, 10 (2012) 3, 47–49.

[20] The Constitution of the Republic of Poland of 2nd April, 1997, Journal of Law of 1997, no 78 item as amended.

[21] See more: Nizioł, Krystyna: *Prawne aspekty polityki finansowej* [*Legal Aspects of Tax Policy*], Difin, Warsaw 2007, *passim*.

of law are economic categories used in the Polish Income Tax from Natural Person Act of 26th July 1991 such as income,[22] cost of receiving income, amortization.

In the economic law, the examples of economization of law can be also found. This kind of law is typically connected with microeconomics. Therefore, the economic categories like market or competition are used in public economic law quite frequently. The good example of connection law and economics is the relevant market, which is the first stage of concentration assessment. The relevant market is defined in the article 4 point 9 of the Act of 16 February 2007 on Competition and Consumer Protection[23] as

> "*a market of goods which by reason of their intended use*, *price and characteristics*, *including quality*, *are regarded by the buyers as substitutes*, *and are offered in the area in which*, *by reason of the nature and characteristics of such goods*, *the existence of market barriers*, *consumer preferences*, *significant differences in prices and transport costs*, *the conditions of competition are sufficiently homogeneous*."

The relevant market is a normative form of some segment of market in economic sense. It investigates the market in geographic and product aspect in order to examine if the concentration of companies does not disturb competition on it.

In public economic law the economic techniques are also exploited. For example, the *Herfindahl-Hirschman Index* (HHI)[24] is an economic method of measurement of concentration on the market, in this case in banking sector. The advantage of the HHI is that it includes all entities in given sector, not only these which the market's share is the biggest.[25] The HHI can take values form 1/*n*, where *n* means the number of entities on the market to 1, which means the situation of a perfect concentration of a value of feature[26]. For example, if the HHI is 0.49 it indicates the market with the leading company with 70% of market share. For the highest levels of concentration, the HHI is not applied. It is used mostly to oligopoly; in this case the HHI is between 0,10 to 0,25.[27]

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[22] Journal of Laws of 2018, item 200 as amended.

[23] Journal of Laws of 2017, item 229 as amended.

[24] The Herfindahl-Hirschman Index is defined as the sum of the squares of the market shares of the companies in the total value of an examined feature. Jackowicz, Krzysztof – Kowalewski, Oskar: *Koncentracja sektora bankowego w Polsce w latach 1994–2000* [*The Concentration of Banking Sector in Poland in Years 1994–2000*], Materiały i Studia, NBP, 143 (2002), 14.

[25] Kwiatkowska, Ewa M.: Mierzalne kryteria oceny konkurencyjności rynków telekomunikacyjnych [The Measurable Criteria of Evaluation of Competition on Telecommunication Markets], *Internetowy Kwartalnik Antymonopolowy i Regulacyjny*, 8 (2013) 2, 84.

[26] Jackowicz–Kowalewski, 2002. 14. If the value of Herfindahl-Hirschman Index is close to zero, it indicates that the market is fragmented and there are many entities on it. On the other hand, if the value of Herfindahl-Hirschman Index is close to one, it shows the monopolization of the market., Kwiatkowska, 2013. 84.

[27] Rogowski, Wojciech – Lipski, Mariusz: *Koncentracja sektora bankowego w Polsce* [*The Concentration of Banking Sector in Poland*], http://kolegia.sgh.waw.pl/pl/KZiF/struktura/IF/struktura/ZFP/Documents/W_Rogowski_M_Lipski.pdf (28.11.2018).

IV. The main characteristics of RIA in Poland in the light of the solutions used in the European Union

As was mentioned above in Polish regulation RIA and IA in legislative procedure are used. RIA is defined in the Polish Statute of working of Council of Ministers from 26th October, 2013[28] (the Statute) as *results of assessment of predicted socioeconomic consequences*. This assessment is a separate part of a draft of legal act (or assumptions of a bill). In the Statute the exemplary elements of RIA were included. There are, among others, entities influenced by the draft of legal act, information about public consultations held before preparing the draft and its scope, presentation the analysis of an influence of the draft for entities, impact on some areas, such as the public finance sector, state budget and budgets of local entities, labour market, competition of economy and entrepreneurship, functioning of entrepreneurs. According to the Statute, RIA should also identify solved problem, define the purpose and the essence of intervention, and compare with solutions adopted in other countries.

In the European Union, RIA is also used; the European Commission uses the term impact assessment (IA). This is a key instrument taking into account by European Commission initiatives and EU legislation in order to prepare it on the basis of transparent, comprehensive and balanced evidence.[29] The objectives of Commission's IA are, among others, helping the EU institutions to design better policies and laws, facilitates better-informed decision making throughout the legislative process; ensures early coordination within the Commission, taking into account input from a wide range of external stakeholders, in line with the Commission's policy of transparency and openness towards other institutions and the civil society, improving the quality of policy proposals by providing transparency on the benefits and costs of different policy alternatives and helping to keep EU intervention as simple and effective as possible, helping to ensure that the principles of subsidiarity and proportionality are respected, and to explain why the action being proposed is necessary and appropriate.[30]

The analytical steps taken during IA at the EU level are as follows:

1.) identifying the problem (among others describe the nature and extent of the problem, identify the key players/affected populations, establish the drivers and underlying causes, develop a clear baseline scenario, including, where necessary, sensitivity analysis and risk assessment;
2.) defining the objectives (i.e. set objectives that correspond to the problem and its root causes, establish objectives at a number of levels, going from general to specific/operational, ensure that the objectives are coherent with existing EU policies and strategies, such as the Lisbon and Sustainable Development Strategies, respect for Fundamental Rights as well as the Commission's main priorities and proposals);
3.) developing main policy options (*i.e.* identify policy options, where appropriate distinguishing between options for content and options for delivery mechanisms, regulatory/non-regulatory approaches, check the proportionality principle, begin

[28] *Regulamin pracy Rady Ministrów* z dnia 29.10.2013 r. [*Statute no 190 Councils' Ministers of 29 October, 2013*], Official Gazette of the Republic of Poland of 2016, no. 1006 as amended.

[29] *Impact Assessment Guidelines*, European Commission, 2009. http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf (28.11.2018).[Impact Assessment Guidelines] 4.

[30] Impact Assessment Guidelines, 6.

to narrow the range through screening for technical and other constraints, and measuring against criteria of effectiveness, efficiency and coherence, draw-up a shortlist of potentially valid options for further analysis;

4.) analysing the impacts of the options (*i.e.* identify, direct and indirect, economic, social and environmental impacts and how they occur, causality, identify who is affected including those outside the EU, and in what way, assess the impacts against the baseline in qualitative, quantitative and monetary terms. If quantification is not possible explain why, identify and assess administrative burden/simplification benefits, or provide a justification if this is not done, consider the risks and uncertainties in the policy choices, including obstacles to transposition/compliance;
5.) comparing the options (*i.e.* weigh-up the positive and negative impacts for each option on the basis of criteria clearly linked to the objectives, where feasible, display aggregated and disaggregated results, present comparisons between options by categories of impacts or affected stakeholder, identify, where possible and appropriate, a preferred option;
6.) outlining policy monitoring and evaluation (*i.e.* identify core progress indicators for the key objectives of the possible intervention, provide a broad outline of possible monitoring and evaluation arrangements).[31]

Taking into consideration the above-mentioned characteristics of RIA in Poland and in the EU some conclusions can be formulated. RIA is usually a part of legislative procedure. In Poland it is an obligatory part of the draft of legal act. The aim of RIA is to support lawmakers in evaluation of socioeconomic consequences of legal acts. Moreover, these consequences should be provided by using economic methods of its evaluation. The main aims of RIA, in Poland and in the EU, it to choose the best option between propositions of regulation regarding any issue, and then evaluate its consequences in order to improve it in the future, if it is necessary.

V. RIA in the Polish Entrepreneurs Law Act and its meaning for development of RIA in Poland

An example of using RIA in Poland in a systemic way are regulations of a new Entrepreneurs Law of 2018[32] (Entrepreneurs Law). In this act for the first time the whole chapter VI (articles 66–71) titled '*Rules preparing drafts of legal act concerning economic law and assessments of its functioning*' was dedicated to RIA. The justification of this regulation was, among others, providing friendly legal conditions for starting, running and closing business. In order to achieve this goal, it was necessary to implement the legal rules concerning these issues to the Polish legal system. RIA also belongs to these rules.[33] The clarifying RIA especially in the case of economic law is intentional, because of the

[31] Impact Assessment Guidelines, 5.

[32] Act of 6 March of 2018 – Entrepreneurs Law, Journal of Laws of 2018, item 646.

[33] *Uzasadnienie do ustawy Prawo przedsiębiorców* [*The Justification to Law Entrepreneurs Act*, *The Print of the Sejm of the Republic of Poland*, *No*. 2051, 2018. http://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=2051 (20.09.2018). 58. [Justification to Law Entrepreneurs Act].

necessity of taking into consideration the specific nature of entrepreneurs' activities, which influence various market's entities (both, in microeconomic and macroeconomics scale). That is why, law-making of economic law requires special attention to every detail.[34] Establishing this regulation was necessary especially in the case of the Polish economic law, because the previous legal regulations were straggled in different legal acts. Moreover, they did not fulfil the goals of law-making.[35] In the Entrepreneurs Law two stages of RIA were established. There are RIA *ex ante*; before the beginning of legislative process and RIA *ex post*; concerning existing regulations. Both stages of RIA concerning legal acts from the field of economic law which are connected with rules of starting, running and closing business. The RIA *ex ante* is a part of the justification of the draft of legal act. It must be stressed that in Entrepreneurs Law new solutions concerning RIA were also established. One of them is that the legislator has to obey during RIA *ex ante* the rules of proportionality and adequacy. The compliance with these rules should, among others, contribute to limitation of administrative duties concerning entrepreneurs, limitation of information duties (or its achievement in less oppressive form e.g. electronic). In a specific way in the Entrepreneurs Law the micro, small and medium-sized enterprises (SMS) were treated. The development of the group of these entrepreneurs is especially important for stimulating of the economic growth. Moreover, the devolvement of the SMSs testifies of the increase of competition and entrepreneurship in the economy.[36] Because of these reasons in the Entrepreneurs Law the SMSs test regards the drafts of legal acts of this group of enterprises were established. The aim of this test is to limit administrative duties for them proportionally.[37] In the Entrepreneurs Law the RIA *ex post* concerning established law can be assessed. If in this case significant distortions in law interpretation or significant risk of caused negative economic or social consequences by the given legal act were revealed, the RIA ex post of this act can be taken. This procedure is stated by the Ombudsman of SMS, who is a new institution created in order to protect the rights of SMS in Poland.[38] The next regulation which can be evaluated in positive way, is the duty of overview the legal acts concerning entrepreneur's activity imposed on government's ministers in each year. In practice, it is a duty of doing RIAs ex post overview concerning this issue. All above mentioned changes of the Polish economic law would strengthen RIA in this field. On the example of this regulation the following elements can be clearly seen: the tendency to precise each RIAs element, the entities obliged to take some actions within RIA or the rules which should be taken into consideration during this procedure.

[34] Justification to Law Entrepreneurs Act, 58–59.

[35] Justification to Law Entrepreneurs Act, 59.

[36] See more: Szczepaniak, Iwona: Rola małych i średnich przedsiębiorstw w gospodarce (na przykładzie przemysłu spożywczego) [The Role of SMSs in the Economy on the Example of the Food Industry], *Equilibrium*, (2009) 1, 71–72.

[37] Justification to Law Entrepreneurs Act, 62.

[38] See more: *Ustawa z dnia 26 stycznia 2018 r. o Rzeczniku Małych i Średnich Przedsiębiorców* [The Ombundsman of SMS Act of 6 March, 2018], Journal of Laws of 2018, item 650.

VI. Summary

There are few ways of economization of law. They are especially evident in the kinds of law which background has close connection to economics (*e.g.* financial law, tax law, economic law). The examples of economization of law which were analysed in the paper, showed how important is the role of the economic categories, techniques or socioeconomic aims of regulation in law and legislative process. It must be stressed that RIA is the method to ensure that during law-making process the economic aspects of regulation are taken into consideration (especially its costs and benefits).

At the European Union level RIA is a quite useful instrument of improving quality of law. In Poland RIA became a real part of legislative procedure quite recently (just since a few years). Unfortunately, the Polish law still can be characterised by shortcomings such as law-making because of short-term or political reasons.[39] It must be stressed that using RIA is only in a formal way in not enough to avoid these problems of legislation. The condition of improving quality of law in Poland by using RIA has to be carried out in a transparent and reliable way. It is the procedure which in Poland still needs improvement. One of good examples of regulations which could serve this purpose are rules concerning RIAs of the Polish economic law established in entrepreneur law. One of the advantages of the new regulations is that they are established in legal act such as law (*i.e.* Entrepreneur Law). For the first time in Poland RIA was established in legal act which is so high in the hierarchy of legal sources. Moreover, the RIA consenting economic law in Poland concentrated, at last, on the issues such as limitation of administrative or information duties of entrepreneurs. A new institution of protecting the rights of SMS, the Ombudsman of SMS was also created. These regulations are a good way of improving RIA in Poland.

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The Constitution of the Republic of Poland of 2nd April 1997, *Journal of Laws* No. 78, item 483 as amended.

[39] Rybiński, Krzysztof – Alwasiak, Stanisław – Kowalewski, Oskar – Lewandowska-Kalina, Monika – Możdżeń, Michał: *Rola grup interesów w procesie stanowienia prawa w Polsce* [*The Role of Interest Groups in the Legislative Process in Poland*], Uczelnia Vistula, Warsaw, 2012. 3–6.

Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Union, Official Journal of the European Union of 10.6.2009, item L 145/1 as amended.

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